



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable E. L. Hinson, Jr.
County Auditor
Polk County
Livingston, Texas

Dear Sir:

Opinion No. 8-4672

Re: County commissioner is prohibited from being pecuniarily interested in contract with county.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"I wish for an Opinion on the following question:

"Polk County has purchased Gasoline, Oil, and Greases from the Arkansas Oil and Fuel Company of Shreveport, La. with a Bulk Station at Corrigan, Texas and has purchased same for a number of years. One of the County Commissioners has bought a half interest in the Bulk Station or Agency at Corrigan, Texas which is in Polk County. The agency will be managed by the other owner of the half interest in said Bulk Station or Agency, and they together will receive a commission on all sales through the Agency at Corrigan, Texas although all bills will be paid to the home office at Shreveport, La. Now the question is:

"Can Polk County buy Gasoline, Oil and Grease from the Arkansas Fuel & Oil Company, of Shreveport, La. through its agency at Corrigan, Texas and one of the Commissioners a half interest in the agency."

Article 373, Vernon's Annotated Texas Penal Code, reads as follows:

"If any officer of any county, or of any city or town shall become in any manner pecuniarily interested in any contracts made by such county, city or town, through its agents, or otherwise, for the construction or repair of any bridge, road, street, alley or house, or any other work undertaken by such county, city or town, or shall become interested in any bid or proposal for such work or in the purchase or sale of anything made for or on
→ account of such county, city or town, or who shall contract for or receive any money or property, or the representative of either, or any emolument or advantage whatsoever in consideration of such bid, proposal, contract, purchase or sale, he shall be fined not less than fifty nor more than five hundred dollars."

In the case of Rigby v. State, 10 S. W. 760, a county commissioner sold two mules to his county and was convicted under the above quoted article of the Penal Code. We quote from the court's decision as follows:

"Manifestly, the Legislature, in enacting the statute, intended thereby to protect counties, cities and towns from official speculation. Such speculation was the evil sought to be suppressed; and the statute strikes at the very root of the evil, by making it an offense for any officer of a county, city or town to become interested pecuniarily in matters wherein such corporations are interested. The purpose of such statute is to prevent official "rings" from being formed and operated to prey upon the treasures of counties, cities and towns; to prevent the officers of such corporations from using their official knowledge and influence to their individual pecuniary advantage in the financial transactions of such. . . . Our construction of the statute is that it inhibits every officer of a county, city or town from selling to or purchasing from such corporation any property whatever."

It is our opinion that the contract and sale mentioned in your letter is in violation of Article 373, Penal

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Code of Texas, and we answer your question in the negative.

Furthermore, we call your attention to Article 2340, Vernon's Annotated Texas Civil Statutes, which provides:

"Before entering upon the duties of their office, the county judge and each commissioner shall take the official oath, and shall also take a written oath that he will not be directly or indirectly interested in any contract with, or claim against, the county in which he resides, except such warrants as may issue to him as fees of office. Each commissioner shall execute a bond to be approved by the county judge in the sum of three thousand dollars, payable to the county treasurer, conditioned for the faithful performance of the duties of his office, that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and that he will not vote or give his consent to pay out county funds except for lawful purposes."

Very truly yours

ATTORNEY GENERAL OF TEXAS

Wm. J. Fanning

By

Wm. J. Fanning
Assistant

WJF:GO

APPROVED JUL 1, 1942

George C. Mann
ATTORNEY GENERAL OF TEXAS

